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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JEFFREY P., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JAMES P.,

Defendant and Appellant.

D049948

(Super. Ct. No. EJ2729A)

APPEAL from an order of the Superior Court of San Diego County, Gary M.
Bubis, Referee. Affirmed.

James P., father of minor Jeffrey P., appeals an order of the juvenile court terminating his reunification services at a six-month review hearing under Welfare and Institutions Code section 366.21, subdivision (e).¹ James contends the court abused its discretion by terminating services because he was motivated to reunify with Jeffrey.

Jeffrey's mother, Kathleen G., was receiving ongoing services and it was in Jeffrey's best interests to reunify with both parents. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Jeffrey was born in February 2006 with a positive toxicology for methamphetamine. James had a history of drug abuse and homelessness, a prior conviction for possessing and transporting a controlled substance and an outstanding arrest warrant for violating probation. Although James was present when Jeffrey was born, he refused to speak to the social worker because he feared being arrested. The San Diego County Health and Human Services Agency (Agency) filed a petition in the juvenile court under section 300, subdivision (b), alleging Jeffrey was in need of the court's protection because his parents abused drugs.

The court detained Jeffrey in out-of-home care. A social worker brought Jeffrey to the family's home for a visit with James. She encouraged James to turn himself in on the warrant and appear in juvenile court so that he could participate in the reunification process. James said he faced six months in custody, and he planned to turn himself in after he spent more time with his children. However, James did not show up for a scheduled four-hour visit with Jeffrey. He also failed to appear for a family unity meeting, believing he would be arrested.

¹ Statutory references are to the Welfare and Institutions Code.

Agency offered James and Kathleen a voluntary services contract regarding their one-year-old son James P., Jr. (Jimmy).² The components of the voluntary case plan were the same as those for reunification with Jeffrey: random drug testing, substance abuse treatment, parenting classes and in-home services. The social worker advised James the court could limit his reunification efforts to six months because of Jeffrey's young age.

Although James had notice of the jurisdiction and disposition hearings, he did not attend. The court sustained the allegations of the petition, declared Jeffrey a dependent and removed him from his parents' custody. The court ordered reunification services for both parents.

According to a six-month review report, James still intended to turn himself in on the arrest warrant. The social worker noted James seemed content to allow Kathleen to participate in services while he did nothing to reunify with Jeffrey. His visits with Jeffrey had been sporadic. James's drug test on July 14, 2006 was negative. However, James disappeared with Kathleen and Jimmy for the next six weeks. The court issued a pick-up and detain order for Jimmy. Based on a report by a family member, the police found James, Kathleen and Jimmy at a local motel. James was arrested on the outstanding warrant and Jimmy was taken into protective custody.

² James had two older children with another woman. These children had been the subjects of several child welfare referrals.

The next month, Kathleen enrolled in a residential drug treatment program. James remained in jail. He requested enrollment in a parenting class and expressed an interest in substance abuse treatment after his release.

At a six-month review hearing, James offered into evidence documents from his detention facility, showing he was on a waiting list for a drug education/substance abuse class, and had received notification of enrollment in a parenting class. After considering the evidence and hearing argument of counsel, the court found returning Jeffrey to his parents' custody would create a substantial risk of detriment to him and there was no substantial probability Jeffrey could be returned to James's custody in the next six months. The court terminated James's reunification services, finding James had not regularly participated in, or made substantive progress with, his court-ordered treatment programs. Because Kathleen had made some progress with her case plan, the court ordered additional reunification services for her.

DISCUSSION

The juvenile court may terminate a parent's reunification services at a six-month review hearing. (*In re James Q.* (2000) 81 Cal.App.4th 255, 260-261.) "Before reunification can be terminated, the agency must establish by a preponderance of evidence that it would be detrimental to return the child to the parent. (§§ 366.21, subd. (f), 366.22, subd. (a).)" (*Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 546.) At the six-month review hearing, the court shall order the minor returned to the physical custody of his or her parent unless it finds, by a preponderance of the evidence, that returning the child would create a substantial risk of detriment to the child's safety,

protection, or physical or emotional well-being. (§ 366.21, subd. (e).) The parent's failure "to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental." (*Ibid.*) In making its determination, the court must consider the efforts and progress shown by the parent and the extent to which the parent availed himself or herself of services provided. (*Ibid.*) Further, if the minor was under the age of three on the date of the initial removal, and the court finds by clear and convincing evidence the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may terminate services and set a section 366.26 selection and implementation hearing. (*Ibid.*; *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1009, fn. 4 [maximum period of reunification is generally six months when minor is less than three years old].)

We review the court's order terminating reunification services for substantial evidence. (See *In re Andrea G.* (1990) 221 Cal.App.3d 547, 552; *In re James Q.* (2000) 81 Cal.App.4th 255, 261.) In this regard, we draw all reasonable inferences in favor of the court's findings, consider the record favorably to the court's order and affirm the order even if other evidence supports a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

Here, James chose not to participate in reunification services in order to avoid being arrested on an outstanding warrant. Despite knowing he had six months to reunify with Jeffrey, James did not participate in substance abuse treatment, parenting classes or

in-home services as required by the court. He visited Jeffrey only sporadically. James did not follow through with his stated plan to turn himself in, and he did not comply with his voluntary services contract in Jimmy's case. There is no reason to believe James will now engage in services simply because he is in custody. Substantial evidence supports the court's order terminating reunification services based on its finding James failed to participate regularly and make substantive progress in his court-ordered treatment plan. (§ 366.21, subd. (e).)

James asserts it was in Jeffrey's best interests to provide continued reunification services to both parents. When reunification efforts continue for one parent after a review hearing, the juvenile court may, but need not, offer reunification services to the other parent. (*In re Alanna A.* (2005) 135 Cal.App.4th 555, 558-559, 564-565.)

Although the primary purpose of limiting the period of reunification is to afford the child stability and permanence where reunification is unlikely within the statutory time limits, "[t]he Legislature has [also] recognized that in some circumstances, it may be fruitless to provide reunification services. [Citations.] In such a case, the general rule favoring reunification services is replaced by a legislative assumption that offering services would be an unwise use of governmental resources." (*Id.* at p. 566.)

The evidence showed James had no relationship with Jeffrey because he did not regularly visit him during the reunification period. James had a criminal history, an unresolved substance abuse problem, and a child welfare history with his other children. Where, as here, reunification is extremely unlikely, "a continuation of the reunification period would waste scarce resources and delay permanency for dependent minors." (*In*

re Aryanna C. (2005) 132 Cal.App.4th 1234, 1242.) The court properly found continuing services for James was not in Jeffrey's best interests.

DISPOSITION

The order is affirmed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P.J.

MCINTYRE, J.